

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NU-YOU TECHNOLOGIES, LLC	§	
	§	
<i>Plaintiff</i>	§	
	§	
	§	
v.	§	CIVIL ACTION NO. 3:15-cv-3434
	§	JURY DEMAND
YOUSSEF ELTOWEISSY,	§	
INDIVIDUALLY AND d/b/a DIAMOND	§	
CUTS AND d/b/a DIAMOND CUTS, LLC,	§	
AND DIAMOND CUTS BARBER	§	
STUDIO LLC	§	
	§	
<i>Defendants.</i>	§	

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**PLAINTIFF'S FIRST AMENDED COMPLAINT**

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1. Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiff Nu-You Technologies, LLC (“Plaintiff” or “Nu-You”) files its First Amended Complaint asserting claims for patent infringement of U.S. Patent No. 7,198,050 (“the ’050 Patent”), a copy of which is attached hereto as Exhibit “A,” against Defendants Youssef Eltoweissy individually and d/b/a Diamond Cuts and d/b/a Diamond Cuts, LLC (“Eltoweissy”) and Diamond Cuts Barber Studio LLC (“Diamond Cuts”) and under 35 U.S.C. § 271, *et seq.* In support thereof, Nu-You would respectfully show the Court the following:

**PARTIES**

2. Nu-You is a Texas limited liability company with its principal place of business located at 8522 Park Lane 2, Dallas, Texas 75231. Nu-You is owned and operated by the two named inventors of the ’050 Patent, Brigitte Gopou (“Gopou”) and Bruce Boyd (“Boyd”).

3. Diamond Cuts is a Georgia limited liability company that has its principal place of business located at 6030 Highway 85, Suite 228, Riverdale, Georgia 30274. Diamond Cuts conducts business in the State of Texas and within the Northern District of Texas. Diamond Cuts does not maintain a registered agent for service of process in Texas. This lawsuit arises in whole or in part from Diamond Cuts' business in Texas. Diamond Cuts' agent for service is the Texas Secretary of State under the Texas Long Arm Statute.

4. Eltoweissy has his principal place of business, located at 6030 Highway 85, Suite 228, Riverdale, Georgia 30274. Eltoweissy conducts business in the State of Texas and within the Northern District of Texas. Eltoweissy does not maintain a registered agent for service of process in Texas. This lawsuit arises in whole or in part from Eltoweissy's business in Texas. Eltoweissy has been personally served with process in this lawsuit.

#### **JURISDICTION AND VENUE**

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant Eltoweissy. Eltoweissy conducts business within the State of Texas and the Northern District of Texas. Eltoweissy, directly or through intermediaries (including distributors, retailers, and others) ships, distributes, offers for sale, sells, and advertises its products in the United States, the State of Texas, and the Northern District of Texas. Eltoweissy has purposefully and voluntarily placed infringing products in the stream of commerce with the expectation that its products will be purchased by end users in the Northern District of Texas. Eltoweissy has committed the tort of patent infringement within the State of Texas and this district.

7. Eltoweissy owns and/or controls the website at the following online address:  
<http://diamondcuts.squarespace.com/>.

8. Eltoweissy and/or Diamond Cuts sells and/or offers for sale the “CURL SPONGE” product through its website which has its home page at <http://diamondcuts.squarespace.com/> (“Diamond Cuts Website”).

9. The home page of the Diamond Cuts Website states that the “CURL SPONGE” is a product of “Diamond Cuts, LLC.”

10. On or before the date of this Amended Complaint, the home page of the Diamond Cuts Website stated that “The ‘Curl Sponge’ by Diamond Cuts, LLC, is the core of the company’s upcoming product lineup.”

11. The Georgia Secretary of State’s office has no record of an entity named Diamond Cuts, LLC.

12. Upon information and belief, “Diamond Cuts, LLC” is a fictional name used at times by Eltoweissy.

13. Eltoweissy and Diamond Cuts Barber Studio LLC are not aware of any entity named Diamond Cuts, LLC that has ever been formed under the laws of the State of Georgia or any other state.

14. Eltoweissy is personally liable for sales or offers to sell products on the Diamond Cuts Website because, among other reasons, Diamond Cuts, LLC is not a business organization formed under the laws of the State of Georgia or any other state. Diamond Cuts, LLC does not exist.

15. Eltoweissy is a barber and/or hair stylist. Eltoweissy has travelled to the State of Texas and, during at least one of said trips to the State of Texas, has performed and/or offered to perform an act of barbering on a third party in the State of Texas.

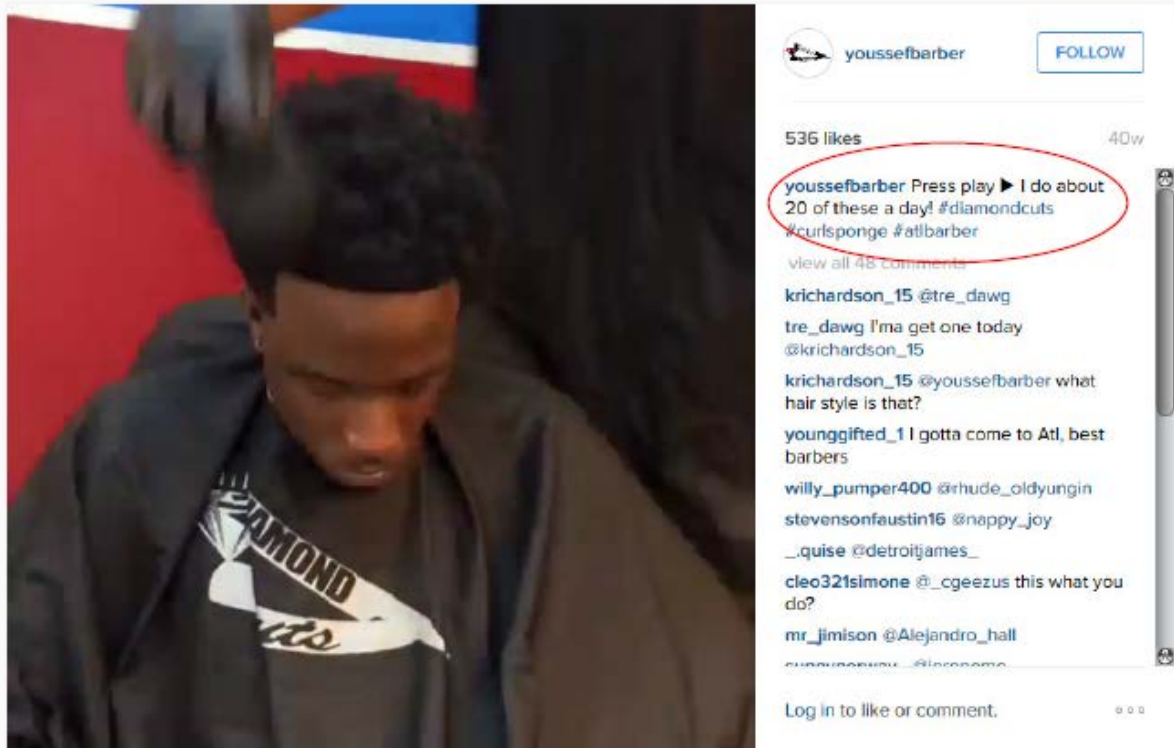
16. Eltoweissy has used a CURL SPONGE in the State of Texas.

17. On information and belief, Eltoweissy has sold, offered to sell, shipped, or directed others to ship at least one CURL SPONGE to an individual located in the State of Texas.

18. Eltoweissy is the owner and founder of Diamond Cuts, and exerts ownership, control, and active management of Diamond Cuts. This control of Diamond Cuts resulted in the online offers for sale and sales of infringing products and establishes minimum contacts with the State of Texas for this Court to exercise specific personal jurisdiction over Eltoweissy. Furthermore, this ownership, control, and active management of Diamond Cuts subjects Eltoweissy to personal liability for any infringement by Diamond Cuts. This control over Diamond Cuts is shown by his active advertising of infringing products from his “Instagram” account, a screenshot of which is show here:

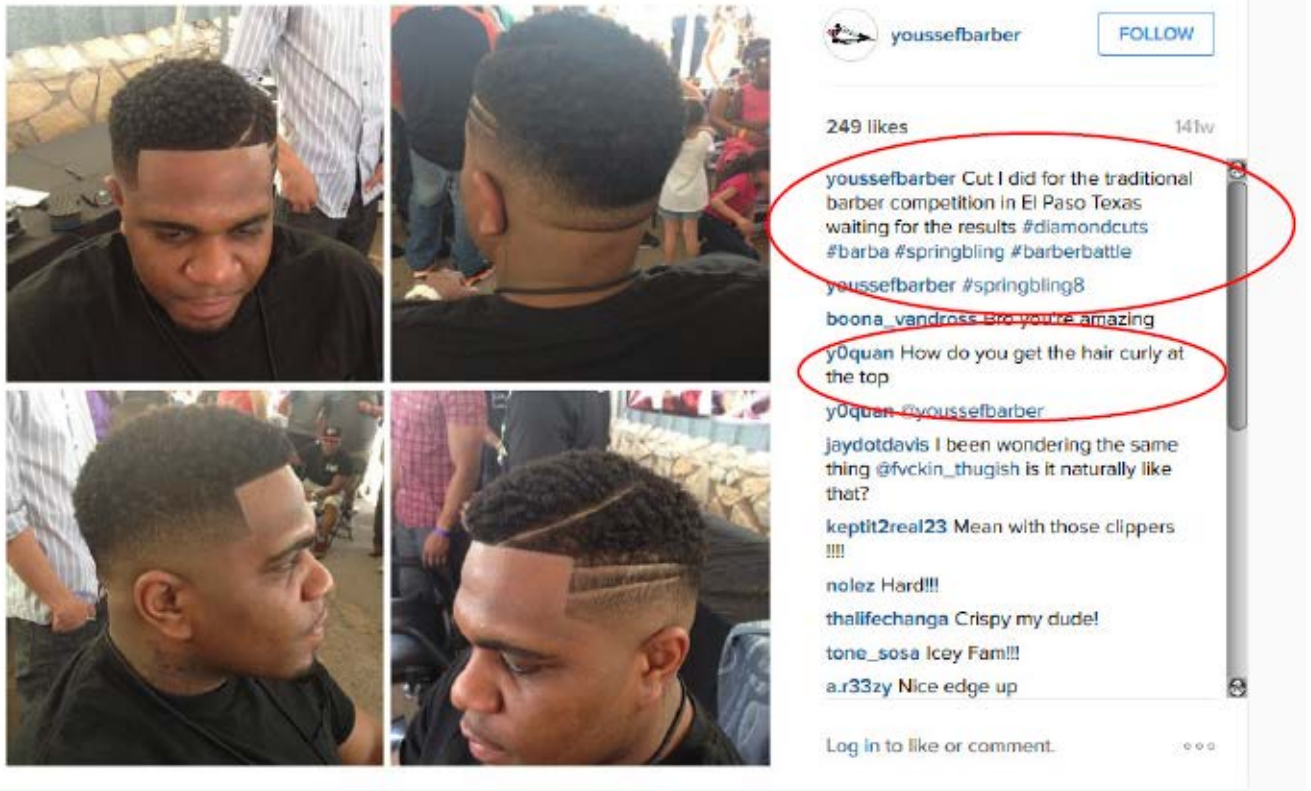


19. Another post on Eltoweissy's "Instagram" account directly references Diamond Cuts and contains a video showing Eltoweissy performing the infringing method:



20. Furthermore, Eltoweissy has directly infringed the asserted patent in Texas. Based on another post from this “Instagram” account, Eltoweissy has previously participated in a barber competition in El Paso, Texas in April of 2013. In this competition, he admits to using one of the infringing products in a way which, on information and belief, performs the infringing method, as the following screenshots from Eltoweissy’s Instagram account show:





21. Eltoweissy later posted on his “Instagram” account that he placed second in the El Paso barber competition:



22. Eltoweissy’s direct infringement of the asserted patent in Texas provides this Court with specific personal jurisdiction for the causes of action of patent infringement asserted in this Amended Complaint.

23. Venue is proper in this District over Eltoweissy under 28 U.S.C. § 1400(b) because venue is proper over Diamond Cuts, as alleged in paragraph 26 below. Because of Eltoweissy’s ownership, control, and active management of Diamond Cuts, he is personally liable as an owner/officer for any infringement by Diamond Cuts and Eltoweissy is subject to the same venue provisions as Diamond Cuts.

24. This Court has personal jurisdiction over Defendant Diamond Cuts. Diamond Cuts conducts business within the State of Texas and the Northern District of Texas. Diamond Cuts, directly or through intermediaries (including distributors, retailers, and others) ships, distributes, offers for sale, sells, and advertises its products in the United States, the State of Texas, and the



Northern District of Texas. Diamond Cuts has purposefully and voluntarily placed infringing products in the stream of commerce with the expectation that its products will be purchased by end users in the Northern District of Texas. Diamond Cuts has committed the tort of patent infringement within the State of Texas and this District.

25. Specifically, Diamond Cuts has an interactive internet website at <http://diamondcuts.squarespace.com> where it offers infringing products for sale, sells infringing products, and otherwise directs activities to residents of Texas. Through this website, Diamond Cuts advertises, conducts business transactions and solicits funds from Texas residents. Furthermore, on information and belief, there has been at least one sale of an infringing product to a resident of Texas and this District. On information and belief, Diamond Cuts has sold multiple other infringing products to residents of this District. This cause of action arises directly out of these sales of infringing products into the state of Texas and this District through Diamond Cuts' established distribution system on its the website.

26. Venue is proper in the Northern District of Texas as to Diamond Cuts under 28 U.S.C. § 1400(b), because Diamond Cuts resides in this District. Diamond Cuts resides in this District under 28 U.S.C. § 1391(c) because it is subject to personal jurisdiction in this District.

### **PATENT INFRINGEMENT**



27. On April 3, 2007, the United States Patent and Trademark Office ("PTO") issued the '050 Patent to Gopou and Boyd, entitled "Hair Sculpting Device and Methods" after a full and fair examination. Gopou and Boyd have assigned all rights in the '050 Patent, including all rights to enforce the '050 Patent and to recover all past, present and future damages related to the '050 Patent to Nu-You.

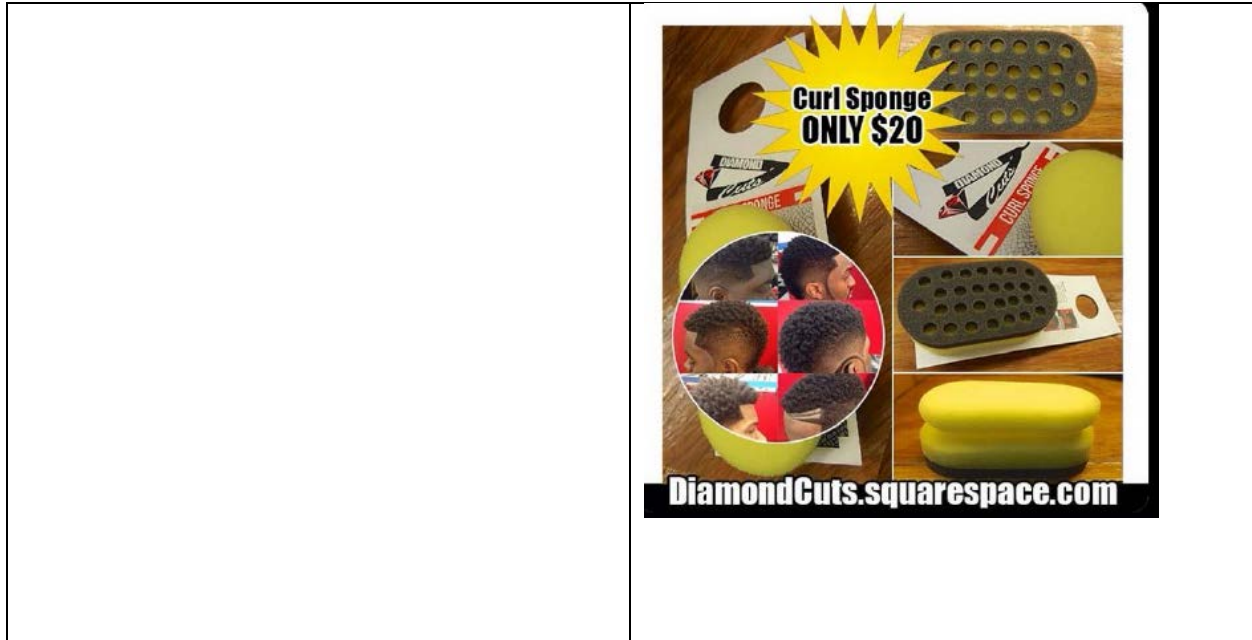
28. The patent relates generally to the method of using a handheld device with a plurality of spaced-apart bores to create clumps of hair at substantially regular intervals. Nu-You manufactures and sells a commercial embodiment of the '050 Patent that is named the Nudred. A picture of a Nudred is included below in Figure 1.

29. Nu-You has the right to enforce the '050 Patent and to recover all damages available under law. Nu-You also has the right to seek injunctive relief with respect to the '050 Patent.

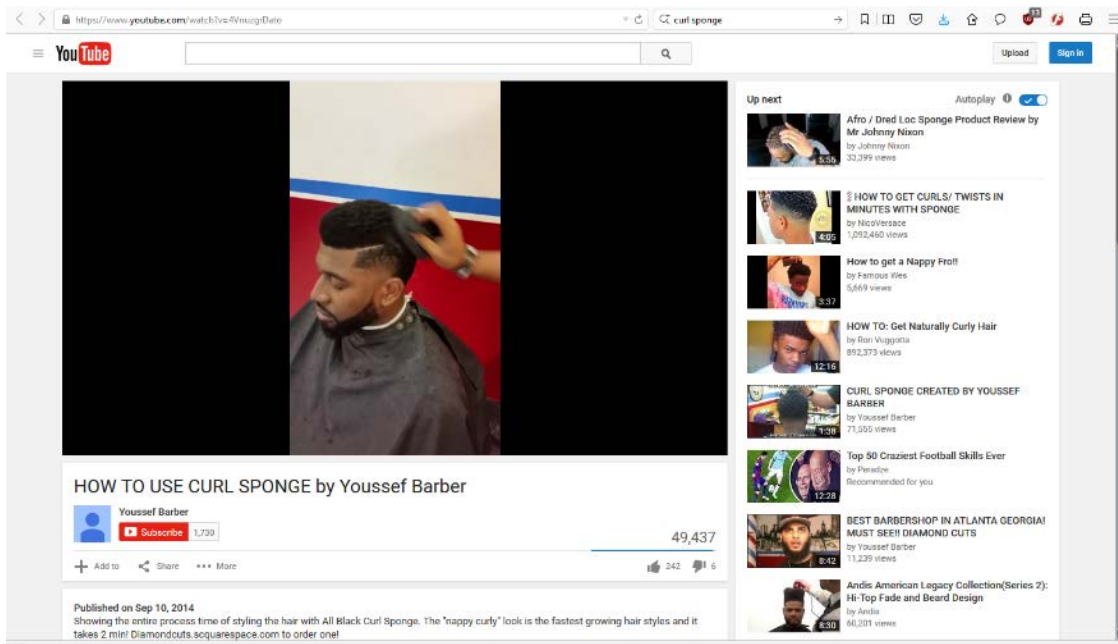
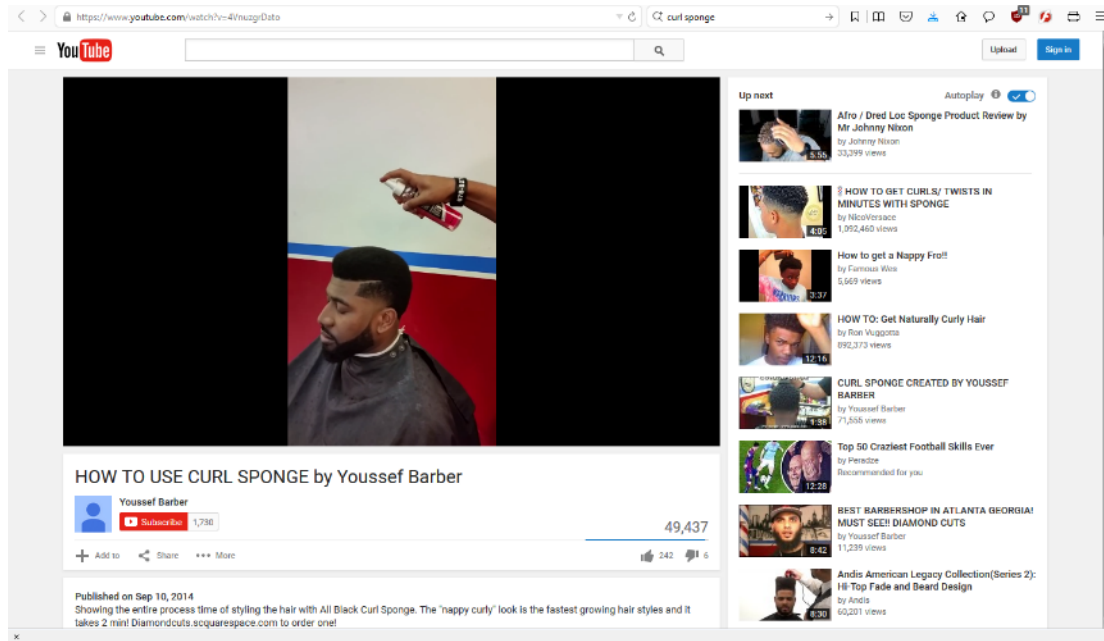
### **Infringement of the '050 Patent**

30. Diamond Cuts and Eltoweissy manufacture, import, sell, and/or offer for sell to customers within the United States the CURL SPONGE which infringes the '050 Patent ("Accused Products"). The following figure compares a Nudred to the Accused Products.

Figure 1	
Plaintiff's Nudred Product	Example of Accused Products
	



31. The Accused Products are meant to be used by pulling it against a person's head after applying a styling liquid to the hair in a manner that will create clumps of hair, commonly referred to as "dreds" or "twists." Instructions in a Youtube.com video that appears to have been posted by Eltoweissy instruct users to perform the steps of the '050 Patent as shown in the following excerpts.



32. The Accused Products infringe the '050 Patent and compete directly with Nu-You's own product line.

### **Knowledge of the '050 Patent**

33. Nu-You has consistently marked its Nudred products with the patent number for the '050 Patent since the '050 Patent were first issued.

34. Nu-You was the first company to create a product with holes bored into it for use in creating clumps of hair as described by the '050 Patent. Nu-You has always manufactured its Nudred products in the United States, using high-quality foam materials. At the Bronner Bros. International Hair Show, held February 18-21, 2012 in Atlanta, Georgia at which Nu-You and Eltoweissy were both in attendance, Eltoweissy met with a representative of Nu-You and purchased approximately 25 Nudred products. On information and belief, shortly thereafter Diamond Cuts and Eltoweissy introduced knock-off products, as shown in Figure 1 above, that are virtually identical to the Nudred.

35. At the time of making, selling, offering for sale, using, and importing its unauthorized copy of the Accused Products, Diamond Cuts and Eltoweissy either knew of or were willfully blind to the existence of the '050 Patent. Diamond Cuts and Eltoweissy also knew or were willfully blind to the fact that the Accused Products would be used to infringe the '050 Patent.

36. Later, Nu-You sent Eltoweissy a letter dated March 6, 2015 in which Nu-You specifically warned Eltoweissy that the CURL SPONGE infringed the '050 Patent. After receiving this letter, Diamond Cuts and Eltoweissy appear to have introduced a modified version of the CURL SPONGE that has an undulated surface rather than a flat surface. Despite these modifications, the surface of the bottom of the sponge is still substantially smooth and the sponge continues to contain bores, or their equivalents, as described in claim 1 of the '050 Patent.

37. The Accused Products are being offered for sale in the United States. For example, the Accused Products are still offered for sale on <http://diamondcuts.squarespace.com/whole-sale/>.

38. Diamond Cuts and Eltoweissy have also had actual knowledge of the '050 Patent and that the use of its products infringes the '050 Patent since at least the date on which it was served with a copy of the original Complaint in this action.

**COUNT ONE: INFRINGEMENT OF '050 PATENT**

39. Nu-You realleges the preceding paragraphs herein.

40. Diamond Cuts and Eltoweissy have been and are now infringing, actively inducing infringement, and/or contributorily infringing the '050 patent pursuant to 35 U.S.C. § 271. The infringing acts have included, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the Accused Products.

41. By using, testing and/or otherwise demonstrating the Accused Products, in the United States, including using the Accused Products to practice the patented method by Diamond Cuts and Eltoweissy on youtube.com and trade shows for the beauty supply industry, Diamond Cuts and Eltoweissy have directly infringed at least one or more of Claims 1, 2, 3, 11, 12, and 15 of the '050 Patent, either literally or through the doctrine of equivalents.

42. By performing each element of the infringing method at various locations, including a barber competition in El Paso, Texas, and his own barber studio in Atlanta, Eltoweissy has further directly infringed the '050 Patent.

43. Accused Products, such as the CURL SPONGE, which are used to practice the claims of the '050 patent, are known by Diamond Cuts and Eltoweissy to be especially made or adapted for use to infringe the '050 patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing uses. The shape of the Accused Products, size and spacing of the bores, thickness of the pliable member that forms the bottom surface of the Accused Products, and type of material of the pliable member and handle are all evidence that the Accused



Products were especially made or adapted to infringe the '050 Patent. A product with these components is not substantially suitable for non-infringing purposes. This is further supported by the instructions on the box in which the Accused Products are sold specifically instructing purchasers to practice the steps of the patented method.

44. Diamond Cuts and Eltoweissy have also actively, intentionally, and/or knowingly induced the infringement of at least one or more of Claims 1, 2, 3, 11, 12, and 15 of the '050 Patent by others, either literally or through the doctrine of equivalents. Diamond Cuts and Eltoweissy actively induce infringement of the '050 Patent by those who purchase the Accused Products, among others, by instructing them to use the product in a manner that infringes the '050 Patent. Diamond Cuts and Eltoweissy also actively encouraged others to manufacture, use, sell, offer for sale, and/or import the Accused Products knowing that it will be used to infringe the '050 Patent.

45. Eltoweissy has also induced infringement of Diamond Cuts by causing it to make, sell, import, and/or offer to sell the Accused Products.

46. Diamond Cuts and Eltoweissy, through sales of Accused Products on the Diamond Cuts website combined with their instructions on how to perform the infringing method on Youtube.com videos and instructions on the box of the original CURL SPONGE, are inducing and/or contributing to infringement of the '050 Patent.

47. The past and continued acts of infringement of the '050 Patent by Diamond Cuts and Eltoweissy have injured Nu-You, entitling it to recover compensatory damages for the infringement in an amount subject to proof at trial. Diamond Cuts' and Eltoweissy's actions have caused Nu-You to lose sales of its own product. Diamond Cuts and Eltoweissy sell their product for considerably less than Nu-You sells the Nudred. As a result, through its sales of infringing

products, Diamond Cuts and Eltoweissy have eroded the price that consumers in the United States are now willing to pay, even for legitimate products that are protected under the '050 Patent.

48. Diamond Cuts and Eltoweissy have willfully infringed the '050 Patent by, among other things, copying a Nu-You product that was marked with the '050 Patent Number for the express purpose of making a knock-off product, and then continuing to sell its Accused Products even after being advised by Nu-You of the '050 Patent.

49. Diamond Cuts' and Eltoweissy's infringement of Nu-You's exclusive rights under the '050 patent will continue to damage Nu-You's business, causing irreparable injury to Nu-You, for which there is no adequate remedy at law, unless Diamond Cuts and Eltoweissy are enjoined by this Court from further infringement.

#### **MISCELLANEOUS**

50. Nu-You has satisfied all conditions precedent to filing this action, or any such conditions that have not been satisfied have been waived.

51. Through this pleading, Nu-You has not elected any one remedy to which it may be entitled, separately or collectively, over any other remedy.

#### **RELIEF**

Plaintiff Nu-You respectfully requests the following relief:

- A. That the Court issue a preliminary injunction against Diamond Cuts and Eltoweissy, enjoining them from making, using, selling, or offering for sale in the United States any products, and from undertaking any processes or methods, embodying the patented inventions claimed in the '050 Patent during the pendency of this case;
- B. That the Court issue a permanent injunction against Diamond Cuts and Eltoweissy, enjoining them from making, using, selling, or offering for sale in the United States any

products, and from undertaking any processes or methods embodying the patented inventions claimed in the '050 Patent;

- C. That the Court award damages to Plaintiff Nu-You;
- D. That the Court award enhanced damages to Plaintiff Nu-You as a result of Diamond Cuts' and Eltoweissy's willful infringement of the '050 Patent;
- E. That the Court declare this to be an "exceptional" case under 35 U.S.C. § 285;
- F. That the Court award pre-judgment and post-judgment interest on such damages at the highest rates allowed by law;
- G. That the Court award Plaintiff Nu-You its costs and attorneys' fees incurred in this action; and
- H. That the Court award such other and further relief, at law or in equity, as the Court deems just and proper.

A JURY TRIAL IS DEMANDED BY PLAINTIFF NU-YOU.

Respectfully submitted,

By: /s/ Steven N. Williams

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 25, 2016 all counsel of record who consent to electronic service are being served with a copy of this document via the Court's CM/ECF system per LR 5.1(d) and FED. R. CIV. P. 5(b)(2)(E).

Additionally, Diamonds Cuts has agreed to accept service of this Amended Complaint via email to jthollin@hollinpatent.com.

/s/ Steven N. Williams

Steven N. Williams